

## **The complaint**

Mrs H complains Provident Personal Credit Limited (“Provident”) is incorrectly reporting a loan on her credit file. Mrs H says given the time that has passed, her loan account should’ve been defaulted.

## **What happened**

Our adjudicator didn’t uphold Mrs H’s complaint. Mrs H didn’t agree with the adjudicator’s opinion. The complaint was then passed to me.

I issued my provisional decision explaining the reasons why I was intending to uphold Mrs H’s complaint. A copy of the background to the complaint and my provisional findings follow (below in italics) and this forms part of this final decision.

## **What I said in my provisional decision:**

*Following a complaint to Provident, it issued a final response letter (FRL). The FRL explained to Mrs H that it hadn’t made an error. It said that the ‘1’ showing on her credit file is as a result of Mrs H missing 4.33 weeks of repayments. Provident confirmed it has an obligation to report accurate information to the credit reference agencies, which is what is it doing.*

*Mrs H, unhappy with this response, referred her complaint to our service. Our adjudicator considered the complaint and said it shouldn’t be upheld. He said Mrs H’s credit file was accurate as it showed a loan with an outstanding balance and this information will continue to be reported until the loan is closed.*

*Provident appear to have agreed with the adjudicator.*

*Mrs H didn’t agree with the adjudicator’s recommendation. In response she said, that based on what the adjudicator explained Provident could potentially leave the account on her credit file for the rest of her life. She also provided us a link to a consumer advice website which provided further information about the default process.*

*As no agreement has been reached, the case has been passed to me for a decision.*

## **What I’ve provisionally decided – and why**

*I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.*

*Based on the information Provident has provided, Mrs H took one loan on 6 May 2017 for £400. Mrs H was due to make 26 weekly repayments of £24. Based on the statement of account provided it looked like only one payment was made on 12 May 2017. Since that date it doesn’t look like any further payments have been made and an outstanding balance remains.*

*Provident has also provided us with a copy of the information that it is reporting to the credit reference agencies. It looks like, it reported a '1' in August 2017 – reflecting that Mrs H's account was more than 4.33 weeks in arrears. In September 2017, this was replaced with a '2' presumably because no further payments were made, and the account went further into arrears.*

*Then, and it's not clear why, from October 2017 Provident started to report a '1' again. From then until now Provident has been recording the account as being '1' month in arrears with an outstanding balance to pay of £600.*

*I've not seen Mrs H's actual credit file, but what Provident is reporting is consistent with what she's told us. The crux of this complaint is that Mrs H says the account ought to have been defaulted by now given she's not made any payments for a number of years.*

*I've considered what Mrs H says, as well as taking into account the relevant guidance, and I'm intending to agree with her: that the account ought to have been defaulted a number of years ago. I've explained my reasoning below.*

*In order to establish whether I think Provident ought to have defaulted the account I've considered the guidance and rules issued by the Information Commissioner's Office (ICO). The ICO is the body created which deals with an individual's data, and it has released a document called "Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies" – this is the guidance that this service uses when determining whether a default ought to have been applied and or whether one shouldn't have been added to a credit file.*

*The basis of the principles is that;*

*Lenders that supply data to the CRAs are required to ensure that the data is accurate, up to date and meets agreed quality standards.*

*Principle 2 goes on to explain;*

***2. Should a payment not be made as expected, information to reflect this will be recorded on your credit file***

*If you do not make your regular expected payment by the agreed time and/or for the agreed amount according to your terms and conditions, the account may be reported to the CRAs as being in arrears. If this continues over time, the level of reported arrears will increase, which may result in the lender taking some form of action. This could include notification of their intention to report the account as "defaulted"*

*Clearly, the ICO foresees, that in certain situations it may be needed to record a default on a consumer's credit file. The principles go on to say the following about the reporting of arrears;*

***Reporting of arrears over time***

*Arrears should generally only increase by one month at a time e.g. status code 1 to 2, 2 to 3 etc. There can be exceptions to this such as fraud, bankruptcy, county court judgments (CCJs), returned cheques or direct debits.*

*Given the above, it's not clear why Provident started to report a '1' then went to a '2' before dropping back down and has been reporting a '1' since. By reducing the arrears to a '1', this would've indicated that Mrs H had made payments to reduce the arrears, but we know this not to be correct.*

Indeed, no further payments have been made in the last four years. So clearly, what Provident is currently reporting isn't correct, as Mrs H's account is more than 1 month in arrears.

But I need to consider what the principles say about recording a default – this is dealt with under Principle 4;

**4. If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down.**

As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in arrears.

There are exceptions to this which may result in a default being recorded at a later stage, such as secured or long term loans e.g. mortgages, or if the product operates in a more flexible way e.g. current accounts, student loans, home credit.

I accept the principles provides exceptions to this including Home Credit – which is what Mrs H's loan was. But I see no reason to depart from this guidance here. This is because the relationship between both parties had broken down, payments haven't been made for a number of years and the current information being reported isn't accurate.

Importantly, the guidance provides examples when a default wouldn't be appropriate;

A default should not be filed:

- If you make a payment, in time, that fully meets the terms set out in the default notice
- If jointly with the lender an agreement is reached for an arrangement and you keep to the terms of that arrangement
- If the amount outstanding is solely made up of fees or charges
- If a lender is given evidence that a customer is deceased (for example a verifiable death certificate, probate or letter of administration).

Looking at Mrs H's complaint I can see no reason why a default hasn't yet been reported and I don't think any of the above conditions have been met which would've prevented Provident from applying one.

Mrs H hasn't made any repayments to the account since May 2017. So, she clearly hasn't made her payments on time and she hasn't reached an agreement with Provident to repay the loan through a repayment plan. And Mrs H owes significant amounts of the original capital borrowed.

So overall, I'm intending to ask Provident to default the account. It is of course possible, that had the correct default process been followed, Mrs H would've been notified of Provident's intention and she may have set up a payment plan. Which could've meant the default wasn't applied.

However, given that Mrs H is aware the debt exists and hasn't as yet made payments, I think it's more likely than the not had Provident followed the correct process in 2017 the account would've defaulted anyway. And Mrs H would've had the adverse information on her credit file from the time.

In summary, the information Provident's currently reporting isn't an accurate reflection of how Mrs H has run the account, and I see no reason given the above Principles outlined by the ICO for the account not to have been defaulted. So, in line with what Mrs H has asked

*for to put things right, I'll be asking Provident to mark the account on her credit file as being in default.*

*Mrs H needs to be aware, that by reporting the default, this will effectively, crystallise the debt, and means that after six years from the date of the default the loan will drop off her credit file.*

*The default will also not remove her obligation to repay what she borrowed. And, she also needs to appreciate that the default could have an impact on her current credit score as a result of this default being applied.*

*To be clear, whether Mrs H accepts this decision or not, an outstanding balance does remain and needs to be repaid. She may wish to speak to Provident about the options available to her in order to repay the balance. But I'd remind Provident of its obligation to treat her fairly and with forbearance if applicable.*

*I've also considered, whether any compensation should be paid to Mrs H. But given, there was always going to be some adverse information reported on the credit file. Based on what I've seen I don't think it would be proportionate to award compensation here.*

I asked both Mrs H and Provident to provide this Service with any further information or comments no later than 25 October 2021.

Provident hasn't responded to the provisional decision and therefore it hasn't provided this Service with any further information to consider.

Mrs H responded. She said she agreed with the findings that the account ought to have been defaulted, but she feels the default should be applied around three months after the loan was taken, so around August 2017.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mrs H agrees that the complaint should be upheld, but she says the default ought to have been applied three months after the loan was taken out, so in August 2017. Whereas, in the provisional decision, I was recommending that the account be defaulted around six months after the loan was taken out.

I've thought carefully about what Mrs H says but I don't agree the account ought to have been defaulted in August 2017.

The ICO recommends that accounts aren't defaulted any sooner than three months, but generally speaking, it is good industry practice for the default to be applied when an account is around six months in arrears (as long as the other conditions are met as outlined in the provisional decision). This is supported by the ICO when it says defaults should be recorded "*normally by the time you are 6 months in arrears.*"

The reason for this is because, it's not enough just to have missed payments but there needs to be a clear breakdown in the relationship between the lender and the borrower. And with most lenders waiting for six months it allows time for the parties to get into contact with each other and to see whether there may be a need for any help and support to be offered.

And when the account reached the point where it was sufficiently in arrears, Provident would've been required to have sent a default notice, which provides a further 28 days for the consumer to try and prevent the default from being applied. So, for example it provides an opportunity for a payment plan to be set up which could've prevented a default being applied.

Taking everything into account, I think the fairest outcome is that the default is recorded from December 2017, because if Provident had followed the ICO guidelines at the time, it is likely this is when the default would've been recorded from. So, it's reasonable that this is when the credit file is updated from.

Having thought about everything I'm still upholding Mrs H's complaint for the same reasons that I outlined in the provisional decision. So, I still think Provident ought to have defaulted Mrs H's account at the end of 2017, and I've outlined below I'm still of the opinion that Provident ought to have defaulted the account at the end of 2017.

### **Putting things right**

Given, the time limits for a default being recorded as outlined by the ICO in its guidance, I consider it reasonable that Provident defaulted the account. The ICO says that a default ought to have been applied when the account reached six months in arrears, I consider that reasonable and that is what I'm going to direct Provident to do.

To put things right, Provident needs to do the following;

- Update Mrs H's credit file to show that her loan account was defaulted from December 2017.
- Provident will also need to arrange for any of the other adverse information reported after this date is amended to reflect the account has defaulted.

This means the loan record will drop off Mrs H's credit file after six years so from December 2023. But as I've said above, an outstanding balance remains which needs to be repaid.

I'd also remind Provident of its obligation to treat Mrs H's fairly and with forbearance when discussing the repayment of the balance.

### **My final decision**

For the reasons I've explained above and in the provisional decision, I'm upholding Mrs H's complaint.

Provident Personal Credit Limited should put things right for Mrs H as I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 24 November 2021.

Robert Walker  
**Ombudsman**